

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

DIANE SLOAN,

Plaintiff,

vs.

MONTGOMERY COUNTY, OHIO, et al.,

Defendants.

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Case No. 3:06cv223

JUDGE WALTER HERBERT RICE

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DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE JUDGE (DOC. #3) IN PART, AND  
SUSTAINING PLAINTIFF'S OBJECTIONS TO SAID JUDICIAL FILING  
(DOC. #5) IN PART; PLAINTIFF'S COMPLAINT DISMISSED, WITHOUT  
PREJUDICE; DIRECTIONS TO PLAINTIFF

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The captioned cause is presently before the Court on Objections (Doc. #5) to a Report and Recommendations of the United States Magistrate Judge (Doc. #3), recommending that the Plaintiff's Complaint be dismissed and that leave to appeal *in forma pauperis* be denied. This Court adopts said Report and Recommendations in part.

Given the deference that must be accorded *pro se* litigants and their pleadings, construing the allegations of the Plaintiff's Complaint most strongly in her favor, it appears she is complaining about the actions of three private individuals, attempting to collect on a Judgment rendered by a judicial officer of

Montgomery County. Construing the allegations of Plaintiff's Complaint in that manner, there is no allegation that the three private-party Defendants were state actors in attempting to carry out the collection of a Judgment ordered by a judicial officer. Moreover, while one might infer that the judicial officer acted beyond his jurisdiction, the most reasonable inference to be drawn from the facts in the Plaintiff's Complaint is that said Magistrate acted as he did within the course of his judicial duties and, as such, is entitled to judicial immunity.

Accordingly, this Court would adopt the Report and Recommendations of the United States Magistrate Judge, to the extent that she finds the Plaintiff's Complaint lacking in allegations such as to confer federal subject matter jurisdiction over her Complaint. However, the dismissal is without prejudice, meaning that the Plaintiff may refile her Complaint, within two weeks from date, setting forth allegations that would, if proven, demonstrate state action and facts stripping the Montgomery County judicial officer of judicial immunity.

To the above extent, the Magistrate Judge's Report and Recommendations (Doc. #3) are adopted in part, and the Plaintiff's Objections sustained in part.

January 31, 2008

/s/ Walter Herbert Rice

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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

Diane Sloan, Pro Se

Magistrate Judge Sharon L. Ovington